

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

JOSEPH PETER SCHMITT,

v.

JEFFREY SMITH, et al.

Defendants.

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C.A. No. 2004-10451-RWZ

OPPOSITION TO PLAINTIFF'S MOTION FOR COURT ORDER FOR
DEFENDANTS TO PRODUCE A TRUE COPY OF SUFFOLK SUPERIOR COURT
CIVIL ACTION NUMBER SUCV 2002-02562 BY DEFENDANT MASSACHUSETTS
DEPARTMENT OF CORRECTION

Now comes the above-named defendant, by and through the undersigned counsel, and opposes plaintiff's motion for a court order for defendants to produce a true copy of Suffolk Superior Court Action Number SUCV 2002-02562.

As reason therefore, the Defendant Department of Correction states as follows:

1. Both the instant action and a related civil action before this Court, No. 2004-10717, involve challenges to prison disciplinary proceedings involving the plaintiff. Nowhere in either complaint does the plaintiff assert claims against the named defendants for lost or negligently handled legal property. Even had such claims been made they would more properly have been brought as state law claims under Mass.Gen. Laws c. 258.
2. Nonetheless, the instant motion seeks to have this Court impose upon the Department of Correction the burden and approximate expense of \$6,425.00 for copying state court civil action files that have no apparent relationship to the underlying cases

before this court.¹ Plaintiff may access copies of the case files through the state court system. It appears he simply doesn't want to bear the expense associated with ordering the materials from the state court.²

3. Moreover, it appears that the materials sought by plaintiff may include sexually explicit matter which plaintiff has been prevented from receiving or possessing at the Massachusetts Treatment Center for the Sexually Dangerous. To the extent such sexually explicit materials are related to the underlying disciplinary matters before this Court and have not already been filed with the court, the defendants are prepared to submit the materials for *in camera* inspection at the appropriate time.

Wherefore, the defendant Department of Correction respectfully requests that the motion for a court order requiring the Department of Correction to provide plaintiff with copies of state court case files including Suffolk Superior Court Action Number SUCV 2002-02562 be denied.

Respectfully submitted,
Defendant Department of Correction

By its attorneys:

NANCY ANKERS WHITE
Special Assistant Attorney General

/s/ Philip W. Silva
Philip W. Silva, Esq.
Bridgewater State Hospital
20 Administration Road
Bridgewater, MA 02324
(508) 279-4543
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¹ Since the state court actions were dismissed without prejudice defendants have not even raised a *res judicata* defense. See Docket Sheet for SUCV 2002-02562, Docket Entry #15. A copy of the Docket Sheet is attached hereto as Exhibit A.

² The estimated costs are taken from the state court estimate contained in the attached docket sheet at docket entry #18. The state court denied plaintiff's request to waive the cost associated with his request for copies of eight court file cases.

I hereby certify that a true copy of the above document was served upon each party appearing pro se by mail on December 23, 2004.

/s/ Philip W. Silva
Philip W. Silva, Esq.

**Commonwealth of Massachusetts
SUFFOLK SUPERIOR COURT
Case Summary
Civil Docket**

Schmitt, M81137 v Smith, MCI-CJ IPS Officer et al

Details for Docket: SUCV2002-02562

Case Information

Docket Number:	SUCV2002-02562	Caption:	Schmitt, M81137 v Smith, MCI-CJ IPS Officer et al
Filing Date:	06/11/2002	Case Status:	Dismissed
Status Date:	06/25/2004	Session:	Civil D
Lead Case:	NA	Case Type:	Prisoner Cases

Tracking Deadlines

TRK:	F	Discovery:	04/07/2003
Service Date:	09/09/2002	Disposition:	08/05/2003
Rule 15:	11/08/2002	Rule 12/19/20:	11/08/2002
Final PTC:	06/06/2003	Rule 56:	05/07/2003
Answer Date:	11/08/2002	Jury Trial:	NO

Parties Involved

8 Parties Involved in Docket: SUCV2002-02562

Party Involved:		Role:	Defendant
Last Name:	Allen, MCI-CJ Supt	First Name:	Peter
Address:		Address:	
City:		State:	
Zip Code:		Zip Ext:	
Telephone:			

Party Involved:		Role:	Defendant
Last Name:	Faria, MCI-CJ disciplinary hearing officer	First Name:	William
Address:		Address:	
City:		State:	

Zip Code:**Zip Ext:****Telephone:****Party
Involved:****Role:** Defendant**Last Name:** Grossi, MCI-CJ IPS Commmander**First Name:** William**Address:****Address:****City:****State:****Zip Code:****Zip Ext:****Telephone:****Party
Involved:****Role:** Defendant**Last Name:** Maloney, Comr of Correction**First Name:** Michael T**Address:****Address:****City:****State:****Zip Code:****Zip Ext:****Telephone:****Party
Involved:****Role:** Defendant**Last Name:** Massachusetts Dept of Correction**First Name:****Address:****Address:****City:****State:****Zip Code:****Zip Ext:****Telephone:****Party
Involved:****Role:** Defendant**Last Name:** Smith, MCI-CJ IPS Officer**First Name:** Jeffrey**Address:****Address:****City:****State:****Zip Code:****Zip Ext:****Telephone:****Party
Involved:****Role:** Defendant**Last Name:** Therien, MCI-CJ disciplinary
Sergeant**First Name:** Ernest**Address:****Address:****City:****State:**

Zip Code:

Zip Ext:

Telephone:

**Party
Involved:**

Role: Plaintiff

Last Name: Schmitt, M81137

First Name: Joseph P

Address: Mass. Treatment Center

Address: 30 Administration Road

City: Bridgewater

State: MA

Zip Code: 02324

Zip Ext:

Telephone:

Attorneys Involved

7 Attorneys Involved for Docket: SUCV2002-02562

**Attorney
Involved:**

Firm Name: MA14

Last Name: Daniele

First Name: Julie E

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State: MA

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Representing: Smith, MCI-CJ IPS Officer, Jeff
(Defendant)

**Attorney
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Sergeant, Ernest (Defendant)

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Representing: Allen, MCI-CJ Supt, Peter
(Defendant)

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Commmander, William
(Defendant)

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Michael T (Defendant)

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State: MA
Zip Ext: 1300
Tel Ext: 125
Representing: Massachusetts Dept of
Correction, (Defendant)

**Attorney
Involved:**
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City: Boston
Zip Code: 02110

Firm Name: MA14
First Name: Julie E
Address: Suite 600 Legal Division
State: MA
Zip Ext: 1300

Telephone:	617-727-3300	Tel Ext:	125
Fascimile:	617-727-7403	Representing:	Faria, MCI-CJ disciplinary hear officer, William (Defendant)

Calendar Events

No Calendar Events found for Docket: SUCV2002-02562.

There are currently no calendar events associated with this case.

Full Docket Entries

79 Docket Entries for Docket: SUCV2002-02562

Entry Date:	Paper No:	Docket Entry:
06/11/2002	1	Affidavit of indigency and Request for Waiver, substitution or state
06/11/2002	1	payment of fees & costs Filing fee service fee waived (IMPOUNDED)
06/11/2002		Origin 1, Type E96, Track F.
06/11/2002	2	Complaint
06/11/2002	3	Civil action cover sheet filed
06/11/2002	4	Motion of plff to serve defendants via first class pre paid mail
06/21/2002	5	ORDER PURSUANT TO M.G.L. C261 S 29 -- The Department of Corrections
06/21/2002	5	is ORDERED to produce to the Suffolk Superior Court a statement of
06/21/2002	5	the inmate account for JOSEPH P. SCHMITT who is housed in the M.C.I.
06/21/2002	5	CEDAR JUNCTION , WALPOLE, MA. 02071. The statement to be produced
06/21/2002	5	shall be for the 6 month period prior to the date of this order. The
06/21/2002	5	statement is to be mailed to: Suffolk Superior Court, Prisoner
06/21/2002	5	Department, 90 Devonshire Street, Boston, Ma. 02109. Service is to be
06/21/2002	5	made upon defendant(s) by means of certified mail by plaintiff. A
06/21/2002	5	copy of the complaint is to be sent to the Office of the Attorney
06/21/2002	5	General or the Department of Corrections by the Plaintiff. (White,
06/21/2002	5	Justice) (Dated 06/20/02) Notice Sent 06/24/2002.
07/02/2002	6	SERVICE RETURNED: Jeffrey Smith, MCI-CJ IPS Officer(Defendant)
07/02/2002	6	(certified mail)
07/02/2002	7	SERVICE RETURNED: William Grossi, MCI-CJ IPS Commmander(Defendant)
07/02/2002	7	certified mail
07/02/2002	8	SERVICE RETURNED: Ernest Therien, MCI-CJ disciplinary
07/02/2002	8	Sergeant(Defendant) Certified mail
07/02/2002	9	SERVICE RETURNED: Peter Allen, MCI-CJ Supt(Defendant) Certified Mail
07/02/2002	10	SERVICE RETURNED: Michael T Maloney, Comr of Correction(Defendant)

07/02/2002	10	certified mail
07/02/2002	11	SERVICE RETURNED: Massachusetts Dept of Correction(Defendant)
07/02/2002	11	Certified mail
07/02/2002	12	SERVICE RETURNED: William Faria, MCI-CJ disciplinary hearing
07/02/2002	12	officer(Defendant) certified mail
07/09/2002	13	Motion of plff to amend complaint (w/o opposition)
07/17/2002	14	Defendant's Emergency Further Motion to Enlarge Time in These and
07/17/2002	14	Related Cases & Allowed (White,J) (Dated 7/15/02) notice sent 7/16/02
08/27/2002	15	ORDER AND JUDGMENT The plaintiff has filed a motion to dismiss
08/27/2002	15	(withdraw) the above captioned actions without prejudice to his
08/27/2002	15	seeking relief in federal court. No opposition to his motion (P#13
08/27/2002	15	in case 02-1461) has been filed. The motion is allowed and the court
08/27/2002	15	orders that: Judgment shall enter dismissing the above seven actions
08/27/2002	15	without prejudice (King, J.) entered on docket pursuant to Mass R Civ
08/27/2002	15	P 58(a) and notice sent to parties pursuant to Mass R Civ P 77(d)
08/27/2002	15	(See Original Order and Judgment (P#38) in case 02-335)
10/04/2002	16	Motion of plff for Court to vacate its Order and Judgment (w/o
10/04/2002	16	opposition)
10/04/2002	17	Motion of plff for copy of case file (w/o opposition)
02/26/2003		Motion (P#[16] Denied (King,J) Notice Sent 2/24/03 (entered
02/26/2003		2/7/03)
02/26/2003		Motion (P#17) DENIED (Patrick King, Justice) (entered 2/7/03)
12/03/2003	18	Motion of plaintiff for copy of case file Denied (White, J.). Notice
12/03/2003	18	sent 12/4/03
12/03/2003		ORDER ON PLAINTIFF'S MOTIONS FOR CERTIFIED COPIES OF CASE FILES AND
12/03/2003		UPDATED DOCKET SHEETS Plaintiff has filed a motion for certified
12/03/2003		copy of case file and updated docket sheet in each of the above
12/03/2003		enumerated cases. This motion in each case is Denied As to at least
12/03/2003		eight of the cases. the same request has already been Denied by King,
12/03/2003		J. on Feb. 7 2003 In addition Plaintiff seeks in excess of 2,500
12/03/2003		pages of certified copies the cost of which totals \$6,425.00 He is
12/03/2003		not entitled to this extraordinary expense particularly at this time
12/03/2003		of inadequate court resources (White, J.). Notice sent 12/4/03 (See
12/03/2003		P#48 in case #99-0546)
12/03/2003		MOTION (P#18) DENIED. See order this date. (White, Justice)
12/03/2003		Notices mailed December 4, 2003.
12/23/2003	19	Motion of plff for reconsideration regarding Justice White's denial
12/23/2003	19	of motion for copy of case file (w/o opposition)
12/24/2003	19	Motion of plff for hearing date on his motion for reconsideration
12/24/2003	19	regarding White, Justice denial of motion for copy of case file and
12/24/2003	19	motion for court to have plaintiff to court hearing (w/o opposition)

03/04/2004	20	Plaintiff Joseph P Schmitt, M81137's notice of appeal
03/11/2004		MOTION (P#19) DENIED. (White, Justice) (dated 03/03/2004) Notice
03/11/2004		Sent 03/11/2004.
03/11/2004		MOTION (P#19.1) DENIED. No hearing necessary. (White, Justice)
03/11/2004		(dated 03/03/2004) Notices mailed 03/11/2004.
04/27/2004	21	Plaintiff Joseph P Schmitt, M81137's notice of appeal
05/03/2004		Notice to Justice Catherine White of the filing of Notice of Appeal
05/03/2004		Notice of service of the filing of Notice of Appeal to: Julie E.
05/03/2004		Daniele, Esquire, Mass Corrections Department
06/18/2004		Notice of assembly of record on Appeal
06/25/2004		COPY of notice of docket entry received from Appeals Court: ORDER
06/25/2004		for the foregoing reasons, the consolidated appeals are dismissed."
06/25/2004		(Mills, J.) (See P#46 in case 2002-335)

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

JOSEPH PETER SCHMITT,)	
)	
)	
v.)	C.A. No. 2004-10451-RWZ
)	
JEFFREY SMITH, et al.)	
)	
Defendants.)	

OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL BY DEFENDANT
MASSACHUSETTS DEPARTMENT OF CORRECTION

Now comes the above-named defendant, by and through the undersigned counsel, and opposes plaintiff's motion to compel to the extent such an order would require the defendant Department of Correction to release the home address of defendant, Michael T. Maloney.

As reason therefore, the Defendant Department of Correction states that although Michael T. Maloney was the Commissioner of the Department of Correction at times relevant to the complaint he is no longer employed by the Massachusetts Department of Correction. Accordingly, the defendant Department of Correction is not authorized to accept service on behalf of defendant Maloney without his express request. Further, Mass. Gen. Laws c. 66, §10 provides in relevant part:

The home address and home telephone number of law enforcement, judicial, prosecutorial, department of youth services, department of social services, department of correction and any other public safety and criminal justice system personnel **shall not be public records** in the custody of the employers of such personnel or the public employee retirement administration commission or any retirement board established under chapter 32 **and shall not be disclosed**, but

such information may be disclosed to an employee organization under chapter 150E, a nonprofit organization for retired public employees under chapter 180 or to a criminal justice agency as defined in section 167 of chapter 6 (emphasis added).

Moreover, the plaintiff is free to seek service of defendant Maloney at his current place of employment.

Wherefore, the defendant Department of Correction respectfully requests that the motion to compel be denied.

Respectfully submitted,
Defendant Department of Correction

By its attorneys:

NANCY ANKERS WHITE
Special Assistant Attorney General

/s/ Philip W. Silva
Philip W. Silva, Esq.
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I hereby certify that a true copy of the above document was served upon each party appearing pro se by mail on December 23, 2004.

/s/ Philip W. Silva
Philip W. Silva, Esq.